

REMARKS

Applicants amended claims 1, 6, 13, 15, 21, 30, and 32, and cancelled claims 28 and 29 without prejudice.

Claims 1-27 and 30-32, of which claims 1, 15, and 30 are independent in form, are pending in the application. Applicants address the Examiner's rejections below.

Claim Rejection – 35 U.S.C. § 112

The Examiner rejected claim 21 as indefinite under 35 U.S.C. § 112, second paragraph. Applicants amended claim 21 in reply to the Examiner's rejection.

Claim Rejections – 35 U.S.C. § 102 – U.S. 4,393,643 ("Fryar")

The Examiner rejected claims 1, 2, 4, 7, 8, and 12 as anticipated by U.S. 4,393,643 ("Fryar") under 35 U.S.C. § 102(b).

Amended claim 1 recites a method of manufacturing an antiperspirant or deodorant product within a container having an application end and an opposite end. The method includes delivering a first composition in fluid form through the opposite end of the container to a mold cavity. The mold cavity is defined at least in part by the container, and has a removable insert. The method also includes allowing the first composition to at least partially solidify. Additionally, the method includes removing the insert from the mold cavity to provide a space, and delivering a second composition in fluid form to the space that was occupied by the insert. After delivery, the second composition contacts the first composition. Claims 2, 4, 7, 8, and 12 depend from claim 1 and thus also include these steps.

Fryar does not disclose or suggest a method of making an antiperspirant or deodorant product in which a first composition and a second composition are added to a container in fluid form and contact each other following delivery of the second composition. Rather, Fryar discloses the placement of a pin that is coated with a barrier material into a mold form. Col. 2, lines 59-63; col. 4, lines 32-33. An outer phase in fluid form is poured into the space between the pin and the outer wall(s) of the mold form, and the pin is removed. Col. 4, lines 42-45;

col. 7, lines 19-21. When the pin is removed, it leaves behind its barrier material coating, which attaches to the outer phase. Col. 7, lines 19-21. Thus, in effect, a portion of the removable insert (Fig. 4, Ref. #1, as identified by the Examiner), namely the barrier material, remains in the mold cavity. An inner phase is then added into the space that had been occupied by the pin (col. 7, lines 34-36) and contacts the barrier material (i.e., the portion of the insert left in the container). The barrier material is added to the container in solid form, not in fluid form. Moreover, although the inner and outer phases of Fryar are delivered in fluid form, they are always separated from each other by the barrier phase, and therefore do not contact each other after delivery of the inner phase, as required by the present claims.

In fact, Fryar emphasizes the importance of preventing contact between incompatible materials in an antiperspirant composition. In the Background, Fryar notes, “[w]hile each phase alone of . . . a [two-phase] stick composition is stable, contact between the two phases can cause destructive interaction between the two phases.” Col. 1, lines 46-49. Subsequently, Fryar explains that, “an object of the . . . invention [in Fryar] is to provide an improved process[] for placing a barrier between two incompatible phases.” Col. 2, lines 3-7.

Thus, Fryar is remote from the method covered by claim 1. Applicants request that the 35 U.S.C. § 102(b) rejection of claims 1, 2, 4, 7, 8, and 12 be withdrawn.

Claim Rejections – 35 U.S.C. § 102 – U.S. 4,202,879 (“Shelton”)

The Examiner rejected claims 28 and 29 under 35 U.S.C. § 102(b) as anticipated by U.S. 4,202,879 (“Shelton”).

Applicants cancelled claims 28 and 29 without prejudice, thereby obviating the Examiner’s rejection.

Claim Rejections – 35 U.S.C. § 103

The Examiner also made a number of claim rejections under 35 U.S.C. § 103:

Claims 3, 5, 14-16, 20, 21, 24, 25, and 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. 5,984,553 (“Piscopo”).

Claims 26 and 27 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of Piscopo, and further in view of U.S. 5,043,114 (“Saito”).

Claims 3, 20, 21, 24, and 25 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. 4,518,553 ("Yarossi").

Claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of Yarossi, and further in view of U.S. 3,972,974 ("Pico").

Claims 3, 13, 14, and 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. 5,947,621 ("Szekely").

Claims 10, 11, and 30-32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. Design Patent D457,263 S ("Gersten").

Claims 10, 11, and 30-32 were rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. Design Patent D454,664 S ("Look").

Claim 9 was rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. 5,643,467 ("Romanco").

Claim 6 was rejected under 35 U.S.C. § 103(a) as unpatentable over Fryar in view of U.S. 4,366,038 ("Kearney").

Claims 15 and 30 are independent claims which, like claim 1, include the requirements that the first and second compositions are delivered in fluid form, and the second composition contacts the first composition after delivery. The other claims depend directly or indirectly from claim 1, claim 15, or claim 30, and thus also include these requirements. As discussed above, Fryar, if anything, teaches away from a method including these requirements. The inner and outer phases of Fryar are delivered in fluid form, but Fryar uses a barrier phase to prevent the second composition from touching the first composition after delivery.

Claim 15 was rejected in view of the combination of Fryar with Piscopo. Claim 30 was rejected over the combinations of Fryar and Gersten and Fryar and Look. But even if a person of ordinary skill in the art used the method described by Fryar to make compositions like those described by Piscopo, Gersten, or Look, the method would still use the barrier phase emphasized by Fryar. Thus, Fryar and Piscopo do not suggest the method covered by claim 15, and Fryar and Gersten and Fryar and Look do not suggest the method covered by claim 30.

The other references cited by the Examiner against various dependent claims do not add anything of significance.

As a result, Applicants request that the 35 U.S.C. § 103 rejections be withdrawn.

Double Patenting

The Examiner provisionally rejected claims 1-4, 10, 11, 13-15, 18, 19, 28, and 30 under the doctrine of obviousness-type double patenting as unpatentable over claims 1, 4, and 7 of copending and commonly owned Application No. 09/784,487.

Applicants plan to submit an appropriate terminal disclaimer and an affidavit or declaration under 37 C.F.R. 1.130 when Application No. 09/784,487 is allowed.

Applicants believe the claims are in condition for allowance, which action is requested.